

IOWA DEPARTMENT OF NATURAL RESOURCES

ADMINISTRATIVE ORDER

IN THE MATTER OF:

**Massey Properties, LLC,
d/b/a The Wharf**

Public Water Supply Facility No. 3126204

**ADMINISTRATIVE ORDER
NO. 2013-WS- 02**

**TO: John Ward, Organizer and
Registered Agent
Massey Properties, LLC
9359 Massey Marina Lane
Dubuque, Iowa 52003**

I. SUMMARY

This administrative order (Order) is issued to Massey Properties, LLC (Massey) dba The Wharf. This Order is issued due to Massey's failure to comply with the Department's requirements for correction of coliform bacteria and nitrate monitoring violations, non-acute total coliform bacteria maximum contaminant level (MCL) violations, failure to pay annual operation permit fees and late fees, failure to comply with water supply operation permit compliance schedules and failure to submit proof of public notification. This Order requires Massey to pay an administrative penalty of \$10,000.00 and fees of \$625.00.

Any questions regarding this Order should be directed to:

Relating to technical requirements:

John Warren, Environmental Specialist
Water Supply Operations Section
Iowa Department of Natural Resources
401 SW 7th, Suite M
Des Moines, Iowa 50309-4611
Phone: (515) 725-0283

Relating to legal requirements:

Diana Hansen, Attorney at Law
Legal Services Bureau
Iowa Department of Natural Resources
502 E. 9th Street
Des Moines, Iowa 50319-0034
Phone: (515) 281-6267

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Direct payment of penalty to:

Iowa Department of Natural Resources
502 East 9th Street
Des Moines, Iowa 50319-0034

II. JURISDICTION

This Order is issued pursuant to Iowa Code section 455B.175(1), which authorizes the Director to issue any order necessary to secure compliance with or prevent a violation of Iowa Code chapter 455B, Division III, Part 1, and the rules promulgated or permits issued pursuant thereto; and Iowa Code section 455B.109 and 567 Iowa Administrative Code (IAC) chapter 10 (455B), which authorize the Director to assess penalties.

III. STATEMENT OF FACTS

1. The Wharf is a bar and restaurant located at 9359 Massey Marina Lane, Dubuque, Iowa 52003 in rural Dubuque County near the Mississippi River. It is owned by Massey Properties, LLC (Massey). The organizer and registered agent for Massey is John Ward. This public water supply (PWS) provides water to one residence, in addition to the bar and restaurant. The facility is open year round and serves an estimated population of 52 persons per day. The residence served by the water supply, located at 9361 Massey Marina Lane, Dubuque, Iowa 52003, currently is home to four children and one adult, at the time of the last inspection on May 1, 2012. This PWS is considered to be a transient PWS.

Water for the system is provided by one shallow well located near the northwest corner of the residence. Water from the well is pumped to the basement of the residence where an eighty-six gallon pressure tank is located. From the basement of the residence the water is piped into the bar and restaurant. No treatment of the water is provided for this system.

2. On July 31, 2008, the Department's Water Supply Operations Section (WSOS) issued a water supply operation permit (permit) for this PWS to the facility owner. This was the first permit issued for The Wharf following purchase of the business by Massey. John Ward was listed as the organizer and registered agent of Massey on the articles of incorporation filed with the Iowa Secretary of State on April 2, 2007.

The July 31, 2008 permit required one coliform bacteria sample be collected and tested each calendar quarter. The July 31, 2008 cover letter to the permit explained that coliform bacteria samples were due by September 30 and December 31, 2008. The July 31, 2008 permit required this facility to take an annual nitrate sample between July 1 and September 30, 2008.

3. Field Office No. 1 (FO 1) visited this PWS on July 24, 2008 and conducted a sanitary survey. The sanitary survey report dated July 31, 2008 noted that the facility had failed to submit several coliform bacteria and nitrate samples for analysis. The same report also noted that the facility owner was not routinely opening mail.

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4. On June 26, 2009, the WSOS issued a revised permit to increase coliform bacteria monitoring to one sample per month. The revised permit, which replaced the prior permit, was issued due to the system's history of total coliform bacteria maximum contaminant level (MCL) violations. This revised permit increased the coliform bacteria monitoring requirement to require this facility to collect and test one coliform bacteria sample per month. The nitrate sample requirement remained the same. The facility was required to collect and test one annual nitrate sample. The revised permit included a compliance schedule in an appendix. The compliance schedule required the installation of continuous chlorination to well no. 1 by September 4, 2009. This requirement was added due to a history of bacteria MCL violations.

5. On May 4, 2010, the WSOS issued a revised permit to the facility owner. The revised permit increased the frequency for coliform bacteria monitoring. The revised permit required the facility owner to collect and test five coliform bacteria samples per month. The nitrate monitoring frequency remained the same. The facility owner was required to collect and test one nitrate sample per year. The revised permit included a compliance schedule in an appendix to the revised permit. The appendix required that this facility install continuous disinfection on well no. 1.

Coliform Bacteria Monitoring Violations

6. This facility owner failed to take a coliform bacteria sample on numerous dates and was notified of coliform bacteria monitoring violations by notice of violation (NOV) letters. The NOV's and public notice instructions sent with the letter additionally advised the facility owner that public notification was required to be given and that proof of public notice was required to be submitted to the Department. The Department has not received proof that public notice for these violations was given. The following are statements of fact regarding coliform bacteria monitoring:

a. On July 31, 2008, an NOV letter was issued by the WSOS to the facility owner for a quarterly coliform bacteria monitoring violation. Public notice was required for the violation as stated in the NOV letter. The WSOS did not receive proof that public notice was given.

b. On October 31, 2008, an NOV letter was issued for failure to collect five routine coliform bacteria samples in September 2008.

c. On November 6, 2008, the WSOS sent the facility owner a letter requiring four repeat coliform bacteria samples be collected due to a positive coliform bacteria sample on November 5, 2008. The letter required that five routine coliform bacteria samples be collected in December 2008. On December 23, 2008, an NOV was issued by the WSOS to the facility owner for a monitoring violation for failure to collect the four required repeat coliform bacteria samples due to the November 2008 positive coliform bacteria sample. Public notice was required for the violation by the NOV letter. The WSOS did not receive proof of public notification from this PWS that public notice had been given.

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d. On January 23, 2009, an NOV letter was issued by the WSOS to the facility owner for failure to collect five routine coliform bacteria MCL samples in December 2008.

e. On April 16, 2009, an NOV was issued by the WSOS to the facility owner for failure to collect a quarterly coliform bacteria sample for the first quarter, 2009.

f. On April 20, 2009, FO 1 visited the facility owner to provide technical assistance concerning the monitoring violations. The facility owner agreed to contact the Dubuque County Sanitarian for assistance in collecting coliform bacteria samples at The Wharf. The April 28, 2009 report by FO 1 concerning the site visit indicated that the facility owner agreed to begin sampling.

g. On June 2, 2009, the WSOS sent the facility owner a letter requiring that four repeat coliform bacteria samples be collected due to a positive test result for a coliform bacteria sample collected on May 27, 2009. The WSOS letter required that this facility collect five routine coliform bacteria samples in June 2009. On June 19, 2009, the WSOS sent the facility owner a letter requiring that four repeat coliform bacteria samples be collected due to a positive test result for a second coliform bacteria sample collected on May 27, 2009. This WSOS letter required that five routine coliform bacteria samples be collected in July 2009.

h. On August 27, 2009, an NOV letter was issued by the WSOS to the facility owner for a monitoring violation for failure to collect five routine coliform bacteria samples in July 2009. Only three of the required five samples were taken by the facility owner. The facility collected seven repeat samples and three routine samples. It appears that the facility owner mislabeled two of the samples as repeat samples rather than routine samples.

i. On December 1, 2009, the WSOS sent the facility owner an NOV letter for a monitoring violation for failure to collect a monthly coliform bacteria sample in October 2009. The June 26, 2009 permit revision changed the coliform bacteria monitoring frequency to one sample per month.

j. On April 22, 2010, an NOV letter was issued by the WSOS to the facility owner for a monitoring violation for failure to take the required March 2010 coliform bacteria sample.

k. On April 27, 2010, the WSOS issued an NOV letter for a public notice violation concerning this facility's failure to submit a copy of the public notification and delivery certification forms for monitoring violations and MCL violations. The NOV letter also was issued for failure to submit a permit renewal application, for failure to pay annual operating fees and for failure to take corrective action.

l. On May 3, 2010, the WSOS sent a letter to the facility owner requiring four repeat coliform bacteria samples and a triggered groundwater sample be collected due to a positive coliform bacteria sample collected on April 29, 2010. The WSOS letter also required that five routine coliform bacteria samples be collected in May 2010. On June 18, 2010, the WSOS issued an NOV letter to the facility owner for a monitoring violation for failure to take the four repeat samples and the triggered groundwater sample required due to the positive April 2010 coliform bacteria sample.

m. On May 4, 2010, a renewed permit was issued. This permit increased the monitoring frequency for coliform bacteria to five samples per month.

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n. On November 17, 2010, an NOV letter was issued by WSOS to the facility owner for a monitoring violation for failure to take the required five monthly samples for October 2010.

o. On February 23, 2011, the WSOS issued the facility owner an NOV letter due to failure to take five bacteria samples in January 2011. No coliform bacteria samples were collected in January 2011 for this facility.

Coliform Bacteria MCL Violations

7. Department rules require that when a routine coliform bacteria sample is analyzed as containing coliform bacteria, additional repeat and routine samples shall be taken. Routine and repeat samples are required to be analyzed at a certified laboratory.

a. On August 21, 2008, the WSOS issued the facility owner an NOV letter due to receipt of a non-acute MCL violation for total coliform bacteria confirmed in August 2008. On June 26, 2009, the WSOS issued the facility owner an NOV letter for a non-acute MCL violation for total coliform bacteria for June 2009. On July 24, 2009, then WSOS issued the facility owner an NOV letter due to receipt of a Non-Acute MCL violation for total coliform bacteria confirmed in July 2009. On September 11, 2009, the WSOS issued the facility owner an NOV letter due to receipt of a non-acute MCL violation for total coliform bacteria confirmed in September 2009. On December 1, 2009, the WSOS issued the facility owner an NOV letter due to receipt of a non-acute MCL violation for total coliform bacteria confirmed in November 2009. The WSOS NOV letters sent after the 2008 and 2009 MCL violations required that additional repeat samples be collected and that five routine coliform bacteria samples be collected for the next month of operation.

b. On August 9, 2011, the WSOS issued the facility owner an NOV letter due to receipt of a non-acute MCL violation for total coliform bacteria for July 2011. On April 30, 2012, the WSOS issued an NOV letter due to receipt of a non-acute MCL violation for two positive routine coliform bacteria samples collected on April 27, 2012. The WSOS NOV letters sent following the 2011 and 2012 MCL violations required that additional repeat samples be collected, that five routine coliform bacteria samples be collected for the next month of operation, and that a triggered groundwater sample be collected. The NOV letters and public notice instructions sent with the NOV letters advised the facility owner that public notification was required to be given for these MCL violations and that proof of giving public notice was required to be furnished to the Department. The WSOS did not receive proof of providing public notice of the MCL violations from the facility owner.

Nitrate Monitoring and Reporting

8. The current water supply operation permit issued for this PWS on May 4, 2010 requires annual nitrate monitoring. Annual nitrate monitoring was required for this facility in the prior permits also. Nitrate samples are required to be analyzed at a certified laboratory. The WSOS notified the facility owner of nitrate monitoring violations through NOV letters. The NOV letters and public notice instructions sent with the letters advised the facility owner that public notification was required to be given for the nitrate monitoring violations and that proof of

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giving public notice was required to be furnished to the Department. The Department has not received proof that public notice for these violations were given. The following are the statements of fact regarding nitrate monitoring:

a. On July 31, 2008, October 28, 2009, July 20, 2010, July 21, 2011, and July 18, 2012, the WSOS issued NOV letters to the facility owner of The Wharf for annual nitrate monitoring violations. The facility owner failed to collect annual nitrate samples during 2008, 2009, 2010, 2011, and 2012. The NOV letters required that public notice be given. The WSOS did not receive any proof that public notice was given for this facility by the facility owner concerning these violations.

Sanitary Surveys and Site Visits

9. On July 31, 2008, a sanitary survey report was sent to the facility owner concerning a visit conducted on July 24, 2008. The report stated that the facility had not submitted several coliform bacteria and nitrate samples for analysis. The report noted that the facility owner was not routinely opening mail. During the inspection, the facility owner agreed to allow the facility manager to open and respond to all correspondence received from the Department. Following the sanitary survey inspection, the FO 1 inspector contacted the facility manager on July 31, 2008 about coliform bacteria and nitrate monitoring. The facility manager agreed to sample for both that day and to submit the samples to the laboratory to be analyzed.

10. On April 28, 2009, a report was completed by FO 1 concerning a technical assistance visit to this facility on April 20, 2009. The purpose of the visit was to discuss monitoring violations with the facility owner. The facility owner agreed to begin sampling.

11. On July 30, 2009, a report was completed by FO 1 concerning a facility visit conducted on July 28, 2009 to investigate the most recent positive coliform bacteria samples and the Non-Acute MCL violation. During the facility visit FO 1 found that the well cap was not secure, no seal was in place, and the vent in the top of the cap was not secure as well. The facility owner was informed of these deficiencies by phone and instructed to contact a certified well contractor to address the deficiencies. The facility owner agreed to do this.

12. On October 14, 2009, FO 1 completed a report concerning a follow-up visit to this PWS on September 28, 2009. The site visit was conducted to determine if the work required by the July 28, 2009 site visit had been completed. The FO inspector observed that the well cap had been installed with a vent but that an open hole was left in the cap where the electrical conduit would be placed normally. The facility owner was contacted by phone and instructed to correct this deficiency. He agreed to have this work done. FO 1 conducted a further follow-up visit on October 13, 2009 to determine if the work was completed as instructed in prior visits. The October 14, 2009 report of this visit indicated that the cap was sealed and that the electrical conduit was threaded through the previously open hole in the cap.

13. On May 10, 2012, a report for a sanitary survey conducted on May 1, 2012 was sent to the facility owner. The report indicated a violation for failure to comply with the operation permit, including repeated violations for failure to collect coliform bacteria and nitrate samples, failure to provide public notification for all violations, and failure to comply with the previous and current operation permit, which required installation of continuous disinfection. The sanitary

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survey report required a response to all of these items and required that a construction permit application for a disinfection facility be submitted within thirty days. To date, no action to install disinfection has been taken. No response to the sanitary survey report has been received. The facility was reminded that failure to comply with all permit requirements would necessitate the Department to pursue further legal action.

Annual Water Supply Fee

14. Invoices were sent to this facility owner on June 26, 2008, June 25, 2009, June 28, 2010, June 28, 2011, and June 28, 2012 for the fiscal years 2009, 2010, 2011, 2012 and 2013 for the \$25.00 annual operation fee. The fees were not remitted as required by the invoice. The Department sent second notices to this PWS advising that the annual fees had not been received. A late fee of \$100.00 was added to each annual fee since the annual fee was not paid by the original due date. These annual fees and late fees have not been paid to date and total \$625.00.

Failure to Comply with Compliance Schedule in Permit

15. The WSOS issued a revised permit to the facility owner on June 26, 2009. The revised permit appendix included the requirement to install continuous disinfection by September 9, 2009 due to the facility's on-going history of coliform bacteria MCL violations. The facility owner failed to comply with this requirement.

16. The WSOS renewed the permit on May 4, 2010 with an appendix and the same compliance schedule that was included in the prior permit revision. The permit also increased the monitoring frequency for coliform bacteria from once per month to five times per month. The permit appendix required the facility owner respond within thirty days with a plan of action for installation of the required equipment. No response was received and no chlorination has been installed for the well at this facility. Based on the facility owner's failure to comply with the requirement to install chlorination in the permits, this requirement is included in this Order.

Public Notification of Violations

17. The WSOS sent this facility owner NOV letters for failure to monitor for coliform bacteria and nitrate and for coliform bacteria MCL violations as detailed above in this Order. The NOV letters and public notice instructions sent with the letters advised the facility owner that public notification was required to be given for the violations and that proof of giving public notice was required to be furnished to the Department by the facility owner for the violations. The WSOS did not receive proof of providing public notice of the violations from the facility owner.

IV. CONCLUSIONS OF LAW

1. Iowa Code section 455B.172 makes this Department the agency of the state to conduct the PWS program. Iowa Code section 455B.171 defines a PWS as a system for the provision of

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pipled water for human consumption, if the system has at least fifteen service connections or regularly serves at least twenty-five individuals. Iowa Code sections 455B.173(3), (5), and (6) authorize the Environmental Protection Commission (Commission) to promulgate rules relating to the operation of PWS systems and to adopt drinking water standards to assure compliance with federal standards adopted pursuant to the federal Safe Drinking Water Act. The Commission has the authority to adopt rules relating to monitoring, record keeping, and reporting requirements for any PWS. The Commission has adopted such rules at 567 IAC chapters 40- 43.

2. Rule 567 IAC 40.2(455B), further defines PWS by defining "community water system" as a PWS which has at least 15 service connections used by year-round residents or regularly serves at least 25 year-round residents, consistent with federal regulations. A "noncommunity water system" is any other PWS. This facility is a transient noncommunity water system.

Coliform Bacteria Monitoring and Reporting

3. Subrule 567 IAC 41.2(1) requires a transient noncommunity water system to be sampled for coliform bacteria at least once per calendar quarter. More frequent sampling may be required and was required by the revised water supply operation permit issued for this facility on August 26, 2009. When positive results are obtained in a routine sample, additional follow-up sampling is required. Subparagraph "c" (1) of the subrule requires that bacterial samples must be collected at sites which are representative of water throughout the distribution system, according to a written sampling plan that meets the criteria of the subparagraph.

4. Subrule 83.1(3) requires the samples to be analyzed for coliform bacteria at a certified laboratory. Subrule 42.4(1) requires that the analytical results be reported to the Department within ten days after the test. Subrule 42.5(1) requires a PWS system to retain records of bacteria analyses of its water supply for a period of five years. This facility has had repeated coliform bacteria monitoring violations, as stated above in Section III. Statement of Facts.

5. Subrule 41.2(1)"b" establishes the MCL for coliform bacteria. For a system that collects less than 40 samples per month, no more than one sample collected during a month may be total coliform-positive. In addition, any fecal coliform-positive repeat sample or *E. Coli*-positive repeat sample, or any total coliform-positive repeat sample following a fecal coliform-positive or *E. Coli*-positive routine sample constitutes a violation of the MCL for total coliforms and is considered an acute risk to health. This facility had coliform bacteria MCL violations as set out above in Section III. Statement of Facts.

Nitrate Monitoring and Reporting

6. Subrule 41.3(1)"c"(5) requires a transient noncommunity water system to be sampled at least once every year, and have the samples analyzed for nitrate, in accordance with prescribed analytical procedures. Repeat monitoring is required to be quarterly for at least one year following any one sample in which the concentration is greater than or equal to 5.0 mg/L as N. The Department may allow a ground water system to reduce the sampling frequency to annually

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after four consecutive quarterly samples are reliably and consistently less than 5.0 mg/L as N. The repeat monitoring frequency is required to be monthly for at least one year following any one sample in which the concentration is greater than or equal to 10.0 mg/L as N. This facility is required to sample annually. The facility owner failed to collect the annual sample for nitrate at this facility in 2008, 2009, 2010, 2011, and 2012.

7. Subrule 83.1(3) requires the samples to be analyzed for nitrate at a certified laboratory. Subrule 42.4(1) requires that the analytical results be reported to the Department within ten days after the test. Subrule 42.5(1) requires a PWS system to retain records of chemical analysis of its water supply for a period of ten years. This facility has received five nitrate monitoring violations, as stated above in Section III. Statement of Facts.

Annual Water Supply Fee

8. Iowa Code section 455B.183A(2)“b” authorized the Commission to adopt fees for operation permits for public water supply systems. This Code section imposed a \$25.00 fee on public water supply systems not owned or operated by a community and serving a transient population. Subrule 43.2(1) was adopted pursuant to this code section. This subrule requires payment of a nonrefundable fee for the operation of a public water system by September 1, of each year. For transient noncommunity systems the fee is \$25.00. The subrule also allows the addition of a late fee of \$100.00 if the fee is not paid timely. This PWS did not pay the \$25.00 fee and \$100.00 late fee for a total of \$125.00 for each of fiscal years 2009, 2010, 2011, 2012 and 2013.

Failure to Comply with Compliance Schedule in Permit

9. Subrule 567 IAC 43.2(2) requires that no person shall operate any PWS system or part thereof without, or contrary to any condition of, an operation permit issued by the Director. Subrule 43.2(5) “a” provides that operation permits may contain such conditions as are deemed necessary by the director to ensure compliance with all applicable rules of the Department, to ensure that the PWS system is properly maintained, to ensure that potential hazards to the water consumer are eliminated promptly, and to ensure that the requirements of the Safe Drinking Water Act are met. Subrule 43.2(5) “b” provides that where one or more MCLs, treatment techniques, designated health advisories, or action levels cannot be met immediately, a compliance schedule for achieving compliance with standards may be made a condition of the permit. This facility owner did not comply with the appendices included in two permits for this facility that required installation of chlorination equipment for the well.

Public Notification of Violations

10. Subrule 567 IAC 42.1(4) requires the owner or operator of a PWS system which fails to perform monitoring required by rule to notify persons served by the system within three months. Public notice is also required for acute and non-acute total coliform bacteria MCL violations under 567 IAC 42.1(2) and (3).

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11. Noncommunity systems may provide public notice by continuous posting in conspicuous places within the area served by the system. The notice is required to provide a clear and readily understandable explanation of the violation, the steps the system is taking to correct the violation, and include the telephone number of the owner, operator, or designee of the system as a source of additional information. Subrule 567 IAC 42.4(1), paragraph "c", provides that the PWS shall submit a representative copy of the public notice to the Department within ten days of completion of the notice. No public notice has been submitted for any violation. The facility owner of this PWS did not comply with the public notice requirements for failure to monitor and for MCL violations as stated above in Section III. Statement of Facts.

V. ORDER

THEREFORE, the Department orders Massey to comply with the following provisions:

1. You are required to conduct all monitoring and reporting required by the permit issued for this facility.

2. You are required to sample this PWS at least five times per month for coliform bacteria, submit the results to a laboratory certified for coliform bacteria analysis, timely report the results to the Department, and maintain the record of such analyses for five years. Perform required follow-up sampling for coliform bacteria when a positive result is obtained from a routine sample. This includes taking all required repeat and additional routine samples required by the Department in the event of receipt of an unsatisfactory coliform bacteria sample.

3. You are required to sample this PWS at least once per year for nitrate, submit the sample results to a laboratory certified for nitrate analysis, timely report the results to the Department, and maintain the record of such analyses for ten years.

4. You are required to provide public notice of the coliform bacteria and nitrate monitoring and coliform bacteria MCL violations as required by Department rules within 30 days of receipt of this Order and submit proof of providing public notice to the Department within ten days of completion of the notice. You are required to continue such public notice until you have established that samples collected from this system meet safe drinking water requirements.

5. You are required to submit a construction permit application and appropriate schedules for installation of a continuous chlorination unit to the Department's Water Supply Engineering Section (WSES) with 30 days of receipt of the Order signed by the Director. The construction permit application must include the following items:

A. Manufacturer's specifications for the equipment.

B. WSES construction permit application schedules 1A, 1C, 7, 13 A and 13 E. The WSES may require additional application schedules for auxiliary treatment equipment. These WSES construction permit application schedules can be located on the Department's website at

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<http://www.iowadnr.gov/InsideDNR/RegulatoryWater/WaterSupplyEngineering.aspx>. The forms also can be obtained from the WSES by calling (515) 725-0360.

C. A detailed drawing of the existing and proposed installation site, including the following items: pipes and valves, chemical application point and sample tap location.

6. You are required to install continuous chlorination equipment at this facility within thirty days of issuance of the construction permit by WSES.

7. An administrative penalty of \$10,000.00 and fees of \$625.00 are assessed by this Order. The administrative penalty and fees are required to be paid to the Department within 60 days of your receipt of the Order signed by the Director.

VI. PENALTY

Iowa Code section 455B.191 authorizes the assessment of civil penalties of up to \$5,000.00 per day of violation for the violations involved in this matter. Iowa Code section 455B.109 authorizes the Commission to establish by rule a schedule of civil penalties up to \$10,000.00 that may be assessed administratively. The Commission has adopted this schedule with procedures and criteria for assessment of penalties in 567 IAC chapter 10. Pursuant to this chapter, the Department has determined that the most effective and efficient means of addressing the above-cited violations is the issuance of an order with an administrative penalty. The administrative penalty assessed by this Order is determined as follows:

a. Economic Benefit. There have been cost savings to the facility by missing 5 annual nitrate samples and missing at least 36 coliform bacteria samples for a total of at least 41 samples missed. The facility owner also avoided shipping costs and the cost of not giving public notice. It is estimated that there is a cost of \$40.00 per sample, including \$25.00 per sample for the time and labor for sample collection not performed and the cost of lab analysis, \$10.00 for shipping, and \$5.00 for giving public notice. This amounts to \$1,640.00 in saved monitoring and reporting costs. Additional cost savings have been realized by not installing the chlorination system and by not purchasing the chemicals required to run a chlorination system. The total economic benefit assessed by this Order is set at \$4,000.00.

b. Gravity of the Violation. One of the factors the Department considers in determining the gravity of a violation is the amount of penalty authorized by the Iowa Code for the type of violation. As indicated above, the Iowa Code authorizes substantial civil penalties. Despite the high penalties authorized, the Department has decided to handle the violations administratively at this time, as the most equitable and efficient means of resolving the matter.

Due to ongoing bacterial contamination, failure to consistently sample for coliform bacteria, and failure to sample at all for nitrates, all visitors and employees, and the residents of the home using the well, have been placed at risk for potentially severe health effects. Having bacterial safe water quality and conducting routine monitoring are central to the administration of the State's safe drinking water program. Routine monitoring and reporting is an important barrier to

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serving contaminated water. Such deficiencies threaten the integrity of this program and public health. Due to the importance of the drinking water program, and in view of multiple non-acute MCL violations for coliform bacteria, violations for monitoring and reporting, and the threat to the integrity of the Safe Drinking Water Act regulatory program, the amount of \$3,000.00 is assessed for this factor due to multiple violations.

c. Culpability. The facility owner has received numerous contacts by the Department through letters, permits, and site visits concerning monitoring and reporting requirements, MCL violations, well deficiencies and public notice requirements. The responsible party has been made fully aware of the responsibilities of a PWS, including requirements for monitoring and reporting, giving public notice, and the requirements to correct MCL violations and well deficiencies. Despite Department assistance, this facility owner remains non-compliant with the stated rules and permits issued for this facility. This Order assesses the amount of \$3,000.00, due to multiple violations, for this factor.

VII. WAIVER OF APPEAL RIGHTS

Pursuant to Iowa Code section 455B.175 and subrule 561 IAC 7.4(1), as adopted by reference by 567 IAC chapter 7, a written notice of appeal to the Commission may be filed within 30 days of receipt of this Order. The notice of appeal should be filed with the Director of the Department, and must identify the specific portion or portions of this Order being appealed and include a short and plain statement of the reasons for appeal. A contested case hearing will then be commenced pursuant to Iowa Code chapter 17A and 561 IAC chapter 7.

VIII. NONCOMPLIANCE

Compliance with Section V. of this Order constitutes full satisfaction of all requirements pertaining to the violations described in this Order. Failure to comply with this Order may result in the imposition of administrative penalties pursuant to an administrative order or referral to the Attorney General to obtain injunctive relief and civil penalties pursuant to Iowa Code section 455B.191.



CHUCK GIPP
DIRECTOR
IOWA DEPARTMENT OF NATURAL RESOURCES

Dated this 13th day of

March, 2013

Massey Properties, LLC dba The Wharf- Water Supply Facility No. 3126204, John Warren- Water Supply Operations Section, Field Office No. 1, Diana Hansen- Legal Services Bureau, II.B.2.a.(1), II.B.2.a.(2), II.B.2.c.(1), II.B.2.f. and II.B.2g.